

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROGER FIANDER,

Defendant.

NO. CR-05-2099-RHW-8

**ORDER RULING ON PRETRIAL
MOTIONS AND SETTING
HEARING ON PROPOSED JURY
INSTRUCTIONS**

Before the Court are Defendant's Second Motion to Dismiss Case (Ct. Rec. 533), Motion for Issuance of Governmental Authority Defense Jury Instruction (Ct. Rec. 536), and Motion in Limine (Ct. Rec. 549). The Court previously issued a preliminary order on these motions and set a hearing (Ct. Rec. 564). At the hearing, Jack Fiander appeared telephonically on behalf of Defendant; Assistant United States Attorney Jane Kirk appeared telephonically on behalf of the Government.

At the hearing, the Government expressed some objections to the language in the Court's preliminary order, but both parties agreed to the substance of the order. Therefore, that order is finalized as set forth below.

The parties also commented on and objected to certain instructions in the Court's proposed final jury instructions (Ct. Rec. 566). Prior to the hearing, the Court also provided the parties with a proposed omnibus scienter instruction, which would synthesize and replace proposed instructions 10 and 21. The parties are directed to provide the Court with written objections and recommended revisions to the proposed instructions, including the proposed omnibus scienter

1 instruction, in advance of the hearing set for Friday, May 29, 2009.

2 Accordingly, **IT IS HEREBY ORDERED:**

3 1. Defendant's Second Motion to Dismiss (Ct. Rec. 533) is **GRANTED in**
4 **part and DENIED in part, with leave to renew.**

5 2. Counts 16-24 of the Indictment in this matter are **dismissed** with
6 prejudice.

7 3. Defendant's Motion for Issuance of Governmental Authority Defense
8 Jury Instruction (Ct. Rec. 536) is **DENIED.**

9 4. The Court reserves ruling on Defendant's Motion in Limine (Ct. Rec.
10 549).

11 5. A hearing is **set for May 29, 2009, at 10:15 a.m.** in Spokane,
12 Washington. If the parties wish to appear telephonically, they are directed to call
13 the Court's conference line at (509) 458-6380 at the appointed time.

14 6. No later than 5:00 p.m. on May 28, 2009, the parties are directed to file
15 written objections and recommended revisions to the Court's proposed
16 instructions, including the Court's proposed omnibus scienter instruction.

17 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
18 Order and forward copies to counsel.

19 **DATED** this 27th day of May, 2009.

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21 *s/Robert H. Whaley*
22 **ROBERT H. WHALEY**
23 Chief United States District Judge
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